

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PACIFIC BELLS, LLC; BRUNSWIKST, LLC;
AND WOW DISTRIBUTING, INC., in their
own and on behalf of similarly situated
employers,

and

MELISSA JOHNSTON; LENA MADDEN;
JUDI CHAPMAN; KATHERINE SOLAN;
JOHN EDMUNDSON; and MIKE LINDBO,
individuals on their own behalf and on behalf
of similarly situated employees,

Class Plaintiffs,

v.

JAY INSLEE, in his capacity as Governor of
the State of Washington; CAMI FEEK, in her
capacity as the Commissioner and Chief
Executive Officer of the Washington
Employment Security Department; DONALD
CLINTSMAN, in his capacity as the Acting
Secretary of the Washington Department of
Social and Health Services; and THE LONG-
TERM SERVICES AND SUPPORTS TRUST
FUND, an employee benefit plan,

Defendants.

Case No. 21-cv-01515-TSZ

MOTION OF SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL
775 AND PUGET SOUND
ADVOCATES FOR RETIREMENT
ACTION TO INTERVENE
PURSUANT TO FED. R. CIV. P. 24(b)

**Note on Motion Calendar:
March 25, 2022**

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 775 and PUGET SOUND
ADVOCATES FOR RETIREMENT ACTION,
Intervenors.

I. INTRODUCTION

Service Employees International Union Local 775 (“SEIU”) and the Puget Sound Advocates for Retirement Action (“PSARA”) (together “Proponents”) are organizations that were deeply involved in creating the Long Term Care Services and Supports Trust Program (“WA Cares”) that lies at the heart of this case.¹ Proponents respectfully move the Court to intervene as defendants in this lawsuit challenging the constitutionality of the WA Cares program. Proponents were among the primary architects of and advocates for WA Cares, shepherding its enabling legislation through an unsuccessful initial consideration by the Legislature, until it passed in 2019 (Ch. 363, Laws of 2019, SSHB 1087). In each year since then, Proponents built support for and worked with legislators to pass measures that improved the statutory foundation for the program. *See* Ch. 98, Laws of 2020 (SSB 6267); Ch. 113, Laws of 2021 (SHB 1323); Ch. 1, Laws of 2022 (SHB 1732); Ch. 2, Laws of 2022 (ESHB 1733) (collectively referred to as the “LTSS Act” or the “Act”). Proponents continue this legislative advocacy through the present day, including working on the legislative amendments made during the 2022 Legislative Session.

Proponents seek to defend the constitutionality of the legislation they worked tirelessly to enact and improve. They satisfy the requirements for permissive intervention set out in Fed. R. Civ. P. 24(b), as well as discretionary factors a court can

¹ SEIU and PSARA worked closely with proposed Intervenor AARP on this years-long legislative effort. Although the AARP moves to intervene separately from SEIU and PSARA, all agree to jointly brief all issues in this litigation as “Proponent Intervenors,” so that their involvement does not cause duplication or any undue burden on the Court or parties.

1 consider in deciding a motion to intervene. *See Ins. Co. of N. Am. v. San Juan Excursions*,
 2 2006 U.S. Dist. LEXIS 114774, *4 (W.D. Wash. 2006); *Spangler v. Pasadena City Bd. of Educ.*,
 3 552 F.2d 1326, 1329 (9th Cir. 1977) (listing additional factors). Proponents' proposed
 4 involvement in the case shares common questions of fact and law with issues raised by
 5 the existing parties in the litigation. *See* Fed. R. Civ. P. 24(b). Additionally, this motion,
 6 filed at the beginning of the case, is timely, without undue delay, and causes no prejudice
 7 to either original party. *Id.*; *Ins. Co. of N. Am.*, 2006 U.S. Dist. LEXIS 114774, *4.

8 Proponents' years of comprehensive efforts to make this long-term care state
 9 benefits program an affordable source of high-quality personal care and support for
 10 Washington's residents give them a strong interest in joining in the legal defense of the
 11 LTSS Act. *See generally* Declaration of Madeleine Foutch in Support of Proponent
 12 Intervenors' Motion to Intervene ("Foutch Decl."), Declaration of Mike Andrew in
 13 Support of Proponent Intervenors' Motion to Intervene ("Andrew Decl."). Courts
 14 typically permit supporters of a challenged statute to intervene to defend its legality in
 15 federal question litigation, and this Court should treat Proponents similarly. *See, e.g.,*
 16 *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995).

17 Accordingly, the Court should exercise its discretion to allow the Proponents of
 18 the WA Cares legislation to intervene in this matter.

19 II. FACTS

20 A. Proponents Were Significantly Involved in all Aspects of Legislative 21 Advocacy for the WA Cares Program.

22 Both SEIU and PSARA have dedicated countless hours and other resources to the
 23 successful passage of the WA Cares program.

24 PSARA is a Washington state grassroots nonprofit organization that was formed
 25 nearly 50 years ago and presently has approximately 1,300 members. Andrew Decl.,
 26 ¶¶2-3. Its mission is to educate retirees, those approaching retirement age, their families

1 and community about issues of critical importance to retired workers, their families, and
2 all Americans. *Id.*, ¶3. For years, promoting access to high-quality affordable long-term
3 care for retirees, particularly through a long-term care public benefit program, has been
4 a focus of PSARA's activities. *Id.*, ¶4. To that end, PSARA has organized and sponsored
5 a Legislative Conference each year attended by legislators, PSARA staff and members,
6 and other advocates and policy makers at which the need for a publicly funded long-
7 term care program was discussed in depth. *Id.*, ¶¶9-11.

8 SEIU is a nonprofit labor organization that represents over 45,000 long term care
9 workers throughout Washington state. Foutch Decl., ¶1. It has long supported the
10 establishment of a public system for providing high-quality long term care services to
11 Washington residents who need this support to remain living in their home
12 communities. *Id.*, ¶4.

13 SEIU's commitment to establishing WA Cares or a program like it stretches back
14 more than 14 years. *Id.*, ¶6. In 2007, SEIU worked with AARP to commission a public
15 policy report to advocate for the creation of a publicly-funded long term care system
16 using social insurance principles. *Id.* The goal was to ease the burden on the State
17 Medicaid program and create a social safety net for all individuals needing this form of
18 care. *See id.*

19 The 2007 report planted the seed that took years to germinate but eventually
20 resulted in the WA Cares program. In 2012, SEIU first included questions about the need
21 for a publicly-funded long-term care system for all in questionnaires for candidates
22 running for the Legislature. *Id.*, ¶7. The concept started to get traction with legislators
23 and in 2013, SEIU, PSARA and other advocates successfully supported the formation of
24 the Joint Executive Legislative Committee on Aging and Disability Issues. *Id.*, ¶8;
25 Andrew Decl., ¶7. This Committee was charged with identifying options and funding
26

1 for addressing the growing need for affordable long-term care in Washington state.
2 Foutch Decl., ¶8.

3 In 2015 PSARA and SEIU, together with AARP, supported legislation to
4 commission a study to identify possible models for a publicly-financed long-term care
5 system for all. *Id.*, ¶9. The study was published in 2017 and provided the initial
6 blueprint for the WA Cares program. *See id.*, ¶10. The feasibility study concluded that
7 while 70% of Washington residents will ultimately require long-term care, only a mere
8 7% had insurance that would cover it. *Id.*, ¶11. For those who required long term care
9 but were unable to qualify for Medicaid, another option was needed. *Id.* Ultimately, the
10 study recommended that the legislature consider establishing a public program funded
11 by a tax collected through payroll deduction. *Id.*

12 SEIU, PSARA and AARP led a coalition of stakeholders called Washingtonians
13 for a Responsible Future, to advocate for the proposed public long-term care benefit
14 program. *Id.*, ¶¶11, 12; *see* Andrew Decl., ¶¶12-17. Legislation was proposed in 2017
15 and 2018, and then in 2019, it was successfully passed. Passage was achieved only
16 through the organized and comprehensive support of SEIU, PSARA, AARP, and others.
17 Foutch Decl., ¶12. During this time, an updated feasibility study was issued, recognizing
18 SEIU and AARP as key stakeholders. *Id.*, ¶15. The Legislature also established a
19 workgroup to further develop the proposal in which SEIU also participated. *Id.*, ¶16.
20 The recommendations of the workgroup, issued in a report, were substantially reflected
21 in the WA Cares legislation that was passed in 2019. *Id.*

22 In 2019, Washington became the first state in the nation to pass a publicly funded
23 long-term care program for all, regardless of income. *See id.*, ¶18. SEIU and PSARA had
24 input into the legislation, testified in support of the bill and organized other stakeholders
25 to support its passage. *Id.*; *see* Andrew Decl., ¶¶8-17. The WA Cares legislation was
26 hailed as a “monumental achievement” to address the unmet caregiving needs of the

1 baby-boom generation. Foutch Decl., ¶20. It was projected to save \$70 million in
2 Medicaid payments in 2025, and a total of \$18.7 billion through 2096. *Id.*, ¶19.

3 SEIU and PSARA have continued to support efforts to improve the WA Cares
4 program. *Id.*, ¶20; Andrew Decl., ¶19. In every legislative session since 2019, Proponents
5 have engaged with legislators to enhance the program so that it works for all
6 Washingtonians. Proponents have been at the forefront of legislative efforts to
7 strengthen WA Cares, including the recent legislation enacted in 2022. Foutch Decl.,
8 ¶¶19-20.

9 In February 2022, the Legislature amended the WA Cares statute to extend the
10 start date of the tax collected through payroll deductions to fund the program to July 1,
11 2023. *See* Ch. 1, Laws of 2022 § 5, *amending* RCW 50B.04.080(1). The 2022 legislation also
12 delayed the start date for receiving benefits under WA Cares from January 1, 2025, until
13 July 1, 2026, and expanded the categories of individuals who may opt in or out of the
14 program. Ch. 1, Laws of 2022 § 4, *amending* RCW 50B.04.060(1), (2) (date for availability
15 of services); Ch. 2, Laws. of 2022, § 2 (expands categories of workers eligible to opt out).

16 **B. Procedural History – Plaintiffs Challenge the Constitutionality of the WA**
17 **Cares Program, and Proponents Move to Intervene.**

18 On November 9, 2021, Plaintiffs filed their Complaint, alleging that the WA Cares
19 program is unconstitutional. Dkt. No. 1. On January 6, 2022, Defendants filed a Motion
20 to Dismiss the Complaint in lieu of an Answer (Dkt. No. 17), to which Plaintiffs filed a
21 brief in opposition on February 9, 2022 (Dkt. No. 20). Defendants filed a Reply Brief on
22 February 18, 2022 (Dkt. 22), and the Motion to Dismiss is currently ripe for consideration.
23 Dkt. No. 17; LCR 7(d)(3). Now, before the deadline for joinder of additional parties and
24 before Court has ruled on Defendants’ dismissal motion, Proponents move to intervene.
25 Proponents have reached out to the parties’ counsel in this matter. Defendants’ counsel
26 indicate that Defendants do not object to Proponents’ intervention in this matter, without

1 waiver of their jurisdictional arguments in their pending Motion to Dismiss. Declaration
 2 of Daniel Gross in Support of Proponents' Motion to Intervene ("Gross Decl.") ¶3.
 3 Plaintiffs' counsel represents, however, that Plaintiffs do not consent to this motion to
 4 intervene and may oppose it. *Id.* ¶4.

5 III. LAW AND ARGUMENT

6 A. Legal Standard.

7 1. Application and Interpretation of Fed. R. Civ. P. 24(b)(1) Factors

8 "On timely motion, the court may permit anyone to intervene who ... has a claim
 9 or defense that shares with the main action a common question of law or fact." Fed. R.
 10 Civ. P. 24(b)(1). The Ninth Circuit has also required that proposed intervenors
 11 demonstrate "an independent ground for jurisdiction." *Devas Multimedia Private Ltd. v.*
 12 *Antrix Corp.*, 2021 U.S. Dist. LEXIS 35040, *6 (W.D. Wash. Feb. 24, 2021). However,
 13 "[w]here the proposed intervenor in a federal-question case brings no new claims," as
 14 here, "the jurisdictional concern drops away." *Id.*, quoting *Freedom from Religion Found.,*
 15 *Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011). For similar reasons, the Ninth Circuit
 16 has held that "in federal-question cases there should be no problem of jurisdiction with
 17 regard to an intervening defendant." *Id.* at 844, quoting 7C Charles Alan Wright, Arthur
 18 R. Miller & Mary Kay Kane, *Federal Practice & Procedure*, § 1917 (3d ed. 2010). Proponents
 19 seek to intervene as defendants to oppose the same federal claims the original
 20 Defendants resist. Gross Decl., ¶5; see generally, Dkt. No. 17, Dkt. No. 22. Thus, no
 21 additional grounds for jurisdiction need be proven here.

22 When deciding whether a putative intervenor meets the Rule 24 standard, courts
 23 are guided by the principle that "Rule 24 traditionally has received a liberal construction
 24 in favor of applicants for intervention."). *Vivid Entm't, LLC v. Fielding*, 2013 U.S. Dist.
 25 LEXIS 54060, *5-6 (C.D. Cal. April 16, 2013), quoting *Doe v. Harris*, 2013 U.S. Dist. LEXIS
 26 4215 *2 (N.D. Cal. Jan. 10, 2013). See also, *U.S. v. Alisal Water Corp.* 370 F.3d 915, 919 (9th

1 Cir. 2004) (“In determining whether intervention is appropriate ... the requirements for
2 intervention are broadly interpreted in favor of intervention).

3 **2. Discretionary Factors.**

4 If none of the Rule 24(b) criteria is absent, the court has broad discretion to grant
5 intervention. *Dep’t of Fair Emp’t & Hous. v. Lucent Techs.*, 642 F.3d 728, 740 (9th Cir. 2011);
6 *Ins. Co. of N. Am.*, 2006 U.S. Dist. LEXIS 114774, *4. In exercising its discretion, the court
7 considers whether intervention will unduly delay the main action or will unfairly
8 prejudice the existing parties. *Id.*, citing *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir.
9 1998). Courts may consider other factors when deciding whether to allow intervention.
10 *See Spangler*, 552 F.2d at 1329. These factors include (a) the “nature and extent of the
11 intervenors’ interest,” (b) whether intervention will “significantly contribute” to the
12 factual development or equitable adjudication of the legal questions presented; and
13 (c) whether the intervenors’ interests are adequately represented by other parties. *Id.*

14 As demonstrated below, Proponents, meet all of the mandatory and discretionary
15 factors for permissive intervention. The Court should thus allow the Proponents of the
16 WA Cares program to defend the legislation they championed, helped to mold in its
17 initial and current form, and served as advocates for its improvement.

18 **B. Fed. R. Civ. P. 24(b)’s Requirements for Permissive Intervention Are All** 19 **Satisfied.**

20 **1. Common Question of Law or Fact – Proponents Seek to Defend** 21 **the Constitutionality of the WA Cares Program.**

22 A potential intervenor must have a claim or defense that “shares with the main
23 action a common question of law or fact.” Fed. R. Civ. P. 24(b). Courts repeatedly find
24 that organizations seeking to join litigation to defend a challenged law they supported
25 legislatively, share a common question of law and fact with a governmental defendant
26 charged with upholding that law. *See, e.g., Puget Soundkeeper All. v. Pruitt*, 2018 U.S. Dist.

LEXIS 124517 *3 (W.D. Wash. July 25, 2018); *Northwest Sch. Of Safety v. Ferguson*, 2015 U.S. Dist. LEXIS 36207, *5 (W.D. Wash. March 23, 2015) (organizations that drafted and campaigned for initiative had common questions of law and fact with defense of action against claims of unconstitutionality); *see also*, *Washington v. U.S. EPA*, 2020 U.S. Dist. LEXIS 71897 *10-11 (W.D. Wash. 2020) (trade organizations seeking to intervene as defendants to uphold EPA water quality standards shared common questions of fact with federal defendants). Here too, Proponents have common questions of law and fact with the main action at bar – defending the Act against Plaintiffs’ claims of unconstitutionality, pre-emption and violation of federal law. Gross Decl., ¶5.

2. Proponents’ Motion to Intervene Is Timely and Is Unlikely to Cause Prejudice or Undue Delay.

To determine whether a motion to intervene is timely, courts typically consider “the stage of the proceeding, prejudice to other parties,² and the reason for and length of the delay.” *Idaho Farm Bureau Fed’n*, 58 F.3d at 1397. Proponents’ motion to intervene is timely. This litigation has just begun, and no Answer has been filed by Defendants to date. *See* Gross Decl., ¶6, *Exh. A*. Nor has a summary judgment motion been filed by any party. *Id.*, ¶6. Under just such circumstances, courts have found cases to be in their early stages with an intervention posing no prejudice to the initial parties, notwithstanding original defendants having filed Motions to Dismiss prior to the requests to intervene.

² Potential prejudice and undue delay are sometimes described as if they are separate factors from Fed. R. Civ. P. 24(b)’s timeliness requirement. However, there is at least substantial overlap between these concepts. *See Abbit v. ING USA Annuity & Life Ins.*, 2016 U.S. Dist. LEXIS 145028 *12 (S.D. Cal. Oct. 19, 2016) (“[T]he likelihood of undue delay and prejudice resulting from intervention weigh against the timeliness of [the] motion for permissive intervention.”); *E&B Natural Res. Mgmt. Corp. v. Cty. of Alameda*, 2019 U.S. Dist. LEXIS 192219 *13 (N.D. Cal. Nov. 4, 2019) (“The question is not whether intervention itself will cause the ‘nature, duration, or disposition of the lawsuit to change,’ but rather, whether the existing parties will be prejudiced by the delay caused by intervention.”). Courts have also explicitly included possible prejudice as a factor to consider in determining the timeliness of a request for permissive intervention. *See League of Latin A.. Citizens*, 131 F.3d 1295, 1302 (9th Cir. 1997). Accordingly, Proponents address timeliness, delay, and potential prejudice together.

1 See *E&B Natural Res. Mgmt. Corp. v. Cty. of Alameda*, 2019 U.S. Dist. LEXIS 192219, *13-14
 2 (N.D. Cal. Nov. 4, 2019) (intervention requested ten months after the initial complaint
 3 filed and after motions to dismiss were granted with leave to amend, but no summary
 4 judgement motions filed, was timely and caused no prejudice); *TIG Ins. Co. v. Haseko*
 5 *Homes, Inc.*, 2010 U.S. Dist. LEXIS 152561, *10-11 (D. Haw. Sept. 9, 2010) (case was in its
 6 “infancy” and “earliest stage” when intervention motion filed, where four motions,
 7 including dismissal motion, had already been filed). A similar conclusion is warranted
 8 here. Proponents did not delay their motion, filed at this early stage of the lawsuit, and
 9 their intervention imposes no prejudice on any party. Moreover, even if there was some
 10 possibility that Proponents’ intervention could result in undue delay or prejudice to
 11 Plaintiffs in an unspecified manner, such theoretical concerns are insufficient to block
 12 intervention at this early stage of litigation. See *Doe*, 2013 U.S. Dist. LEXIS 4215, *7
 13 (putative intervenors’ likely contributions to the action outweighed any “as yet abstract
 14 danger that delay or prejudice” could result from the intervention).

15 **C. The Discretionary Factors Favor Permissive Intervention – Proponents’**
 16 **Interests, Full and Just Development of Facts and Claims, and**
Representation.

17 **1. Proponents’ Interest in the Subject and Outcome of this Action,**
 18 **and their Contribution to the Full and Fair Development of the**
 19 **Issues on which this Action Turns Strongly Support their**
Intervention.

20 Federal district courts in this circuit typically grant permissive intervention to the
 21 proponents and supporters of challenged legislation, as they are held to have a
 22 substantial interest in the defense of that legislation and can furnish the knowledge and
 23 perspective essential both to a full development of the legislation’s factual context and a
 24 just and equitable adjudication of the law’s viability. See *e.g., Boardman*, 2017 U.S. Dist.
 25 LEXIS 72340, at *6; *Nw. Sch. of Safety*, 2015 U.S. Dist. LEXIS 36207, at *5; *Vivid Entm’t, LLC*
 26 *v. Fielding*, 2013 U.S. Dist. LEXIS 54060 *10 (C.D. Cal. Apr. 16, 2013); *Doe v. Harris*, 2013

1 U.S. Dist. LEXIS 4215 *7 (N.D. Cal. Jan. 10, 2013); *Jackson v. Abercrombie*, 282 F.R.D. 507,
 2 519-20 (D. Haw. 2012). Proponents have similarly broad and weighty interests in the
 3 subject and outcome of this action. Proponents invested very substantial time, resources,
 4 and efforts in passing the Act and improving upon its initial program. Foutch Decl.,
 5 ¶¶7-18, 20-22; Andrew Decl., ¶¶6-17, -20. They have worked with legislators since 2017
 6 to craft the Act, returning repeatedly to the Legislature to pursue its passage and refine
 7 its terms. *Id.*, ¶¶9-14, 16-19; Foutch Decl., ¶¶12-18, 20-22. They played key roles in state-
 8 created commissions that researched the subject of the challenged legislation and
 9 recommended to the Legislature features incorporated into the original program, as well
 10 as changes to be made to it. *Id.*, ¶¶8-11. They have conducted extensive public education
 11 and advocacy efforts to ensure the legislation's enactment and have a significant interest
 12 in defending its constitutionality. *Id.*, ¶¶18, 20, 23; Andrew Decl., ¶¶9-11, 16, 18, 20. *See,*
 13 *e.g., Nw. Sch. of Safety*, 2015 U.S. Dist. LEXIS 36207, at *5. There can be no dispute that
 14 Proponents and their members have a strong interest in the subject of this litigation.

15 Further, Proponents' inclusion as full parties is critical to a thorough development
 16 and fair and full adjudication of the facts and claims raised in this matter. SEIU's 45,000
 17 members are all providers of long-term care services. Foutch Decl., ¶1. These workers
 18 may be made available for hire by Washington residents under the WA Cares program.
 19 PSARA, like AARP, represents the interests of Washington retirees and others who will
 20 rely upon and use the services made available through the WA Cares program. Andrew
 21 Decl., ¶¶3-4. Together with AARP, the members of SEIU and PSARA span the full
 22 spectrum of individuals directly involved in providing and receiving the public benefits
 23 to be delivered through WA Cares. Foutch Decl., ¶23. Proponents will thus significantly
 24 contribute to the full development of the facts surrounding this legislation, as well as the
 25 just and equitable adjudication of the legal questions raised in this challenge to its
 26 validity.

Proponents need not demonstrate that Defendants will inadequately represent their interests, in order for the Court to exercise its discretion to allow intervention. *See Doe*, 2013 U.S. Dist. LEXIS 4215, at *7. Proponents merely need to show that their participation in the lawsuit may help ensure that the interests of the public that support the legislation are “fully represented and that ‘all viable legal arguments in favor of the [legislation’s] validity are brought to the court’s attention.’” *Id.* Proponents represent both Washington residents who need and will make use of WA Care services and the people who will deliver them. They are well-situated to ensure together that the interests of the broad swath of the public who support WA Cares are fully represented and that all applicable legal arguments supporting the Act may be raised for the Court’s consideration in this matter.

D. Proponents Provide Clear Grounds for the Motion and Need Not File a Responsive Pleading Presently.

Proponents need not file a responsive pleading with this motion to merit intervention. To the contrary, doing so is not only legally unnecessary, but it would waste the parties’ resources. As noted above, Fed. R. Civ. P. 24(c)’s nominal requirement that a responsive pleading be filed along with a motion to intervene is read broadly to permit intervention without such a pleading “where the court [is] otherwise apprised of the grounds for the motion.” *Westchester Fire Ins. Co.*, 585 F.3d at 1188; *see also Vivid Entm’t, LLC*, 2013 U.S. Dist. LEXIS 54060, *5-6 (Fed. R. Civ. P. 24 is liberally construed to favor intervenors.). This motion and the accompanying declarations make plain the motion’s basis and Proponents’ opposition to all legal claims raised by Plaintiffs in their Complaint, satisfying this requirement. *See generally* Foutch Decl., Andrew Decl., Gross Decl., ¶5.

Additionally, Proponents commit to filing an Answer within the deadlines applicable to original Defendants, if such a pleading is required. *Id.*, ¶7 (Proponents

1 support but do not provide any additional briefing related to Defendants' pending
 2 Motion to Dismiss). However, the time by which Defendants will be required to file an
 3 Answer, should it ever come, is as yet undetermined.³ Plaintiffs have just filed a
 4 proposed First Amended Complaint (Dkt. 20, p.19, fn.11), and Defendants' pending
 5 Motion to Dismiss renders indeterminate which if any claims will survive to require a
 6 further responsive pleading. Any Answer from Proponents that is responsive to the
 7 currently operative Complaint would thus be at least superfluous and consequently
 8 unnecessary for Proponents to merit intervention here.

9 IV. CONCLUSION

10 The Court should grant Proponents' motion to intervene in the litigation as
 11 defendants.

23 ³ As discussed *supra*, the Legislature recently amended major facets of the WA Cares program. *See*
 24 Ch. 1, Laws of 2022, Ch. 2, Laws of 2022. Plaintiffs admit that these changes render moot their restitution
 25 claim, leading them to file a proposed Amended Complaint with their dismissal motion opposition brief.
 26 Dkt. No. 20, p. 19, fn11. If, however, the Court determines that the Legislature's recent changes to the WA
 Cares program are fatal to more of Plaintiffs' claims, Plaintiffs may be required to further amend the
 Complaint to conform to the Court's ruling, either relieving Proponents from filing any Answer or forcing
 the Proponents to file a new Answer.

1 DATED: March 9, 2022.

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